REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED KERRY GARVIS WRIGHT - State Bar No. 206320 kgarviswright@glaserweil.com 2 THOMAS P. BURKE JR. - State Bar No. 288261 tburke@glaserweil.com 3 GLASER WEIL FINK HOWARD **AVCHEN & SHAPIRO LLP** 4 10250 Constellation Boulevard, 19th Floor Los Angeles, California 90067 Telephone: (310) 553-3000 5 Facsimile: (310) 556-2920 6 Attorneys for Petitioner 7 Marcy Simon 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF CALIFORNIA 10 SAN FRANCISCO DIVISION 11 12 13 MARCY SIMON, an individual residing in New CASE NO.: 3:21-mc-80013 York, 14 Petitioner, PETITIONER MARCY SIMON'S NOTICE 15 OF PETITION AND PETITION TO **CONFIRM ARBITRATION AWARD AND** v. 16 FOR ENTRY OF JUDGMENT MAPLE BEACH VENTURES, LLC, a Nevada limited liability company; MAPLE BEACH [9 U.S.C. § 9 (Federal Arbitration Act)] 17 VENTURES ONE, LLC, a Wyoming limited liability company; and MAPLE BEACH 18 Declaration of Kerry Garvis Wright VENTURES ONE, LLC, a Delaware limited submitted concurrently herewith 19 liability company; DATE: **TBD** 20 Respondents. TIME: **TBD** COURTROOM: **TBD** 21 22 23 24 25 26 27 28

0

19

20

21

22

23

24

25

26

27

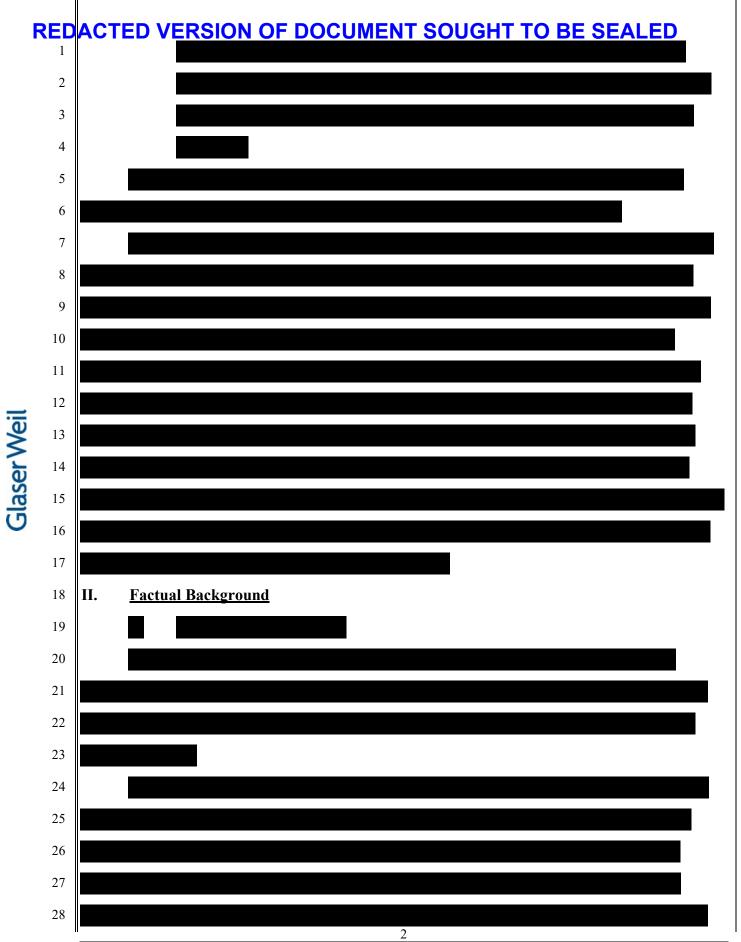
28

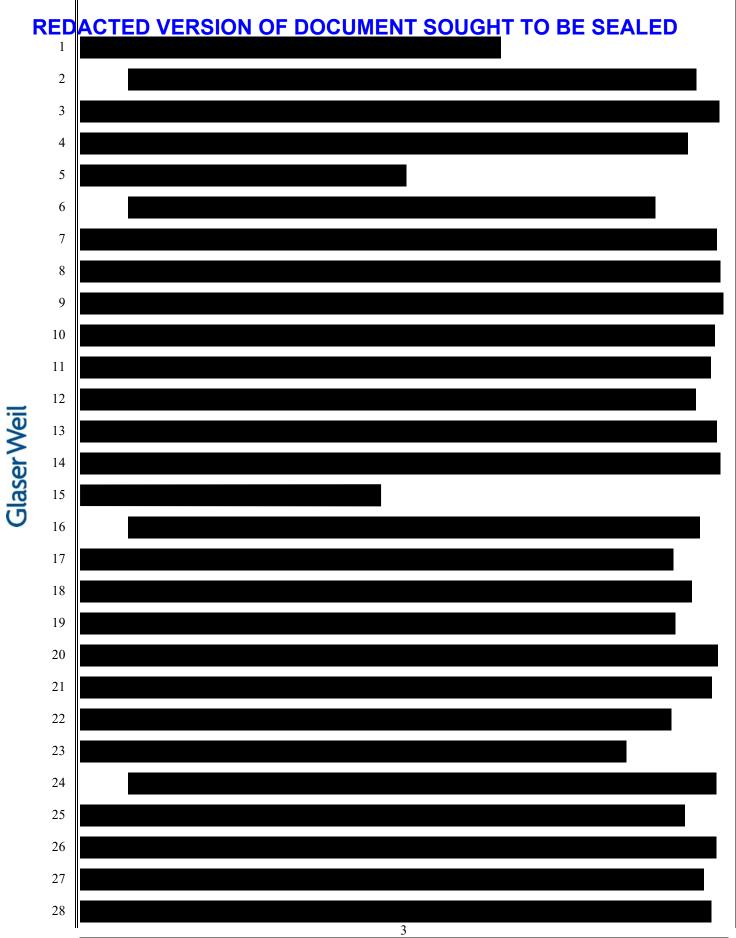
REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED **NOTICE OF PETITION AND PETITION** 2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: 3 Courtroom of the United States District Court for the Northern District of California, 4 5 Petitioner Marcy Simon ("Petitioner" or "Ms. Simon") will petition the Court, under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq., for an order 6 7 8 9 10 11 12 and for entry of judgment thereon. 13 This petition is based upon this Notice; the accompanying Memorandum of Points and 14 Authorities; the Declaration of Kerry Garvis Wright and all exhibits thereto; any matters of which the Court may take judicial notice; and such other evidence and argument as may be presented on 15 this petition. 16 **RELIEF SOUGHT** 17 18 Ms. Simon seeks an order from this Court (i) confirming the Final Award, (ii) entering

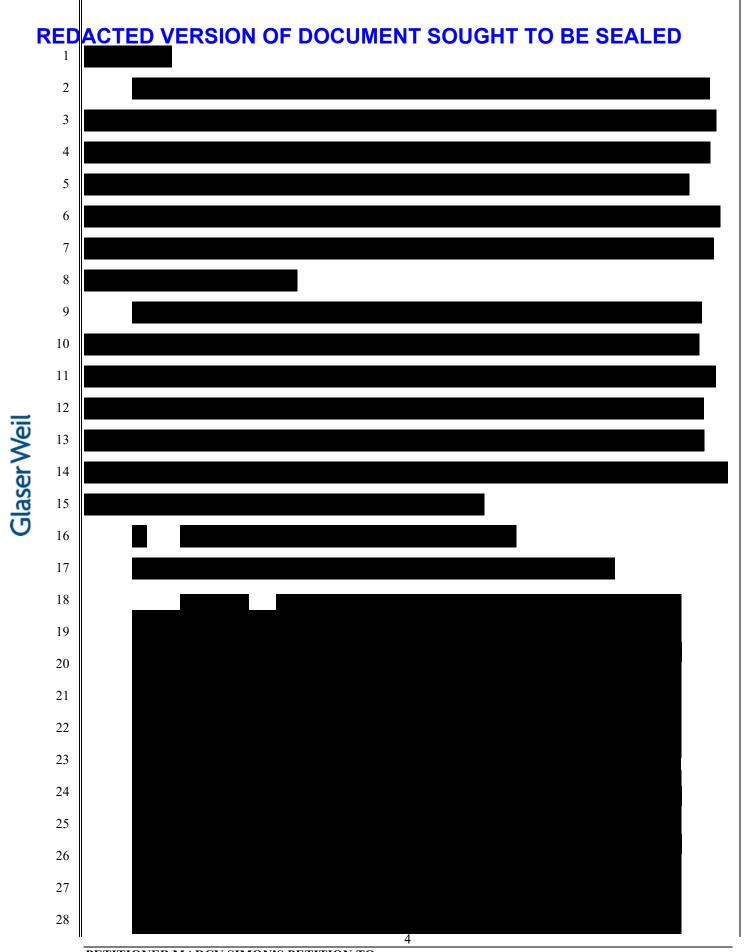
judgment in accordance with the Final Award, and (iii) awarding Ms. Simon her attorney's fees and expenses in incurred in connection with the enforcement of the judgment.

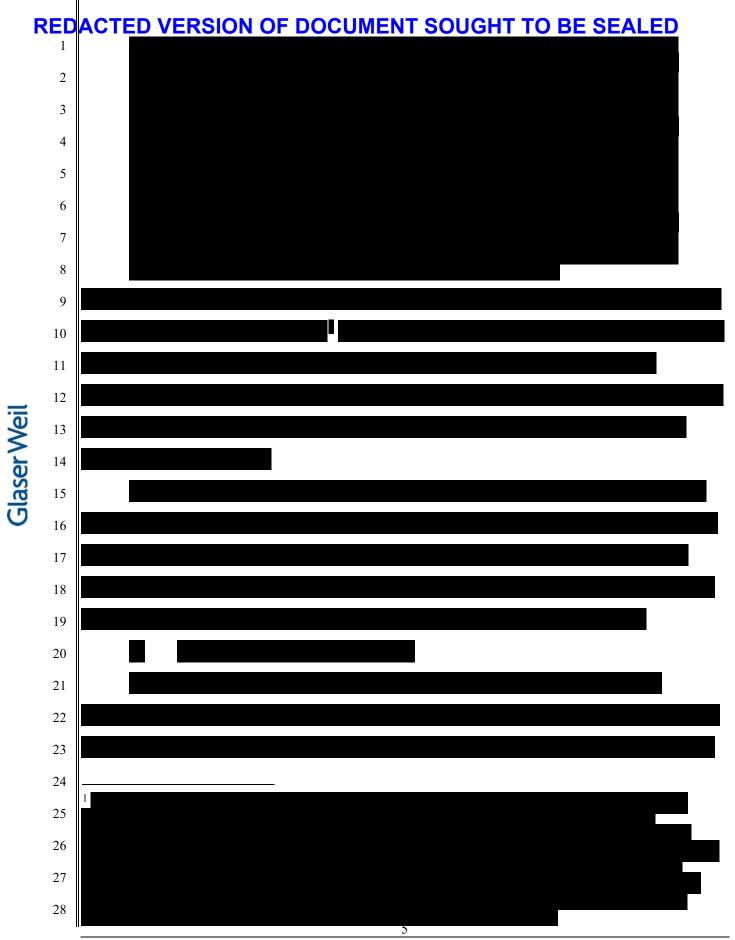
MEMORANDUM OF POINTS AND AUTHORITIES

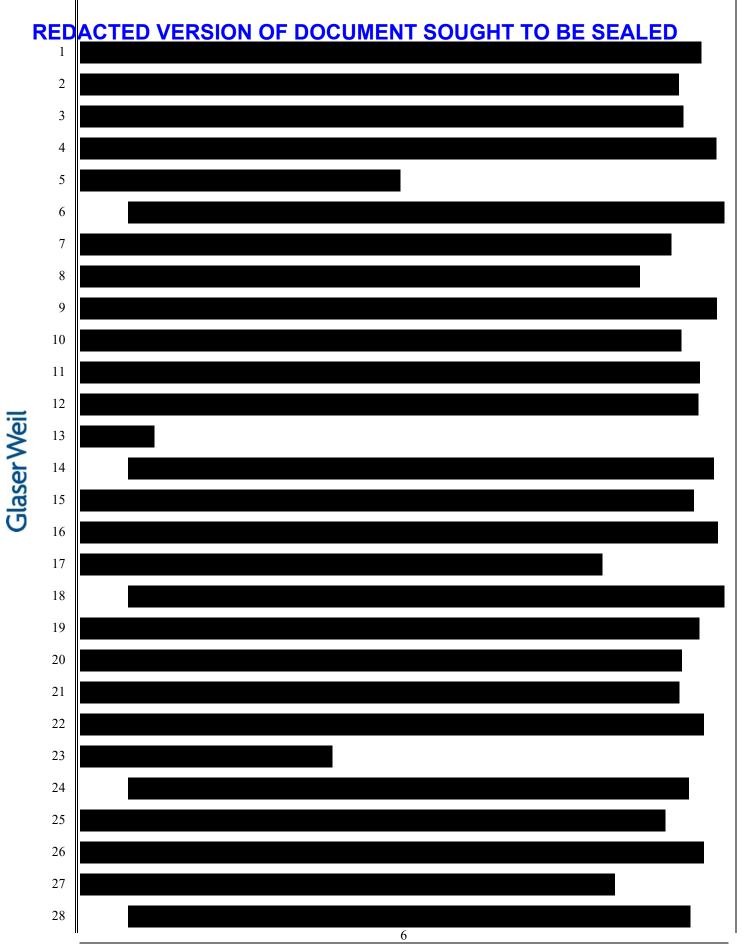
l .	<u>Introd</u>	<u>luction</u>				
						I
						_
				•		

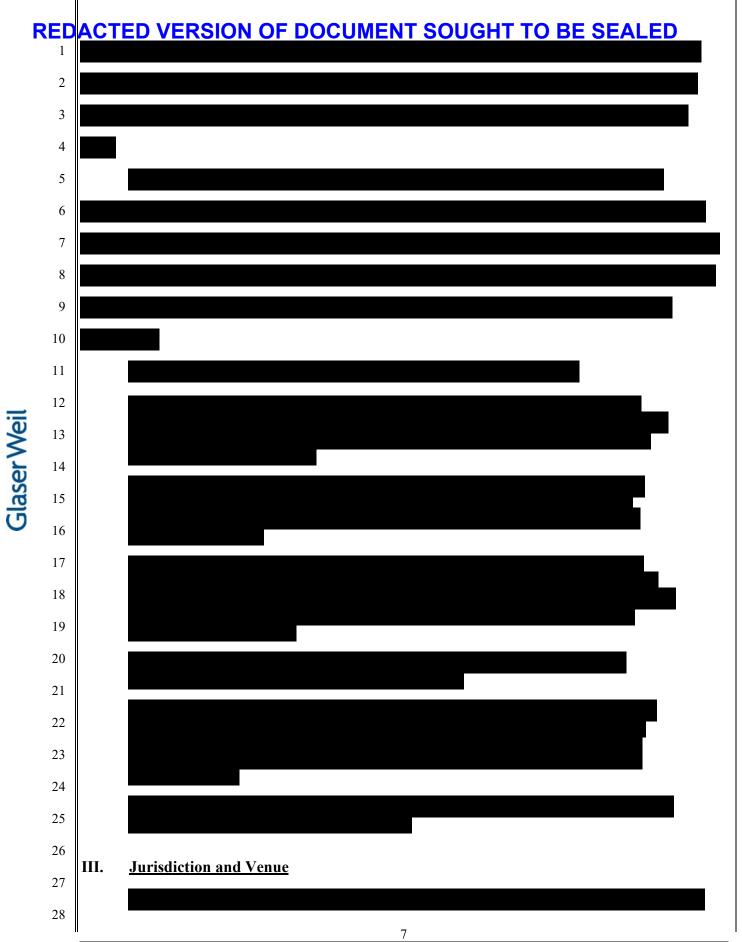












2

3

4

5

6

7

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

'prescribed' exceptions applies"); Bosworth v. Cubicon Corp., 2016 WL 4088879, at *1 (N.D. Cal.

Aug. 2, 2016) (Alsup, J.) ("A district court *must* confirm an arbitration award unless it is vacated pursuant to Section 10 or modified pursuant to Section 11") (emphasis in original).

The grounds for vacating or correcting an arbitration award under Sections 10 and 11 are limited to: (1) fraud in the procurement of the agreement; (2) arbitrator corruption; (3) arbitrator misconduct or exceeding of powers; and (4) corrections for material miscalculations, exceeding of powers, or imperfection of form. *G.C. & K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1104 (9th Cir. 2003). As Section 10 provides the exclusive grounds for vacatur of an arbitration award, a party seeking vacatur "must clear a high hurdle." *Smith v. VMware, Inc.*, 2018 WL 3744472, *1 (N.D. Cal. Aug. 7, 2018) (Gilliam, J.) (quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010)).

Thus, "[c]onfirmation is a summary proceeding that converts a final arbitration award into a judgment of the court." K&M Installation, Inc. v. United Brotherhood of Carpenters, Local 405, 2016 WL 1559712, at *2 (N.D. Cal. Apr. 18, 2016) (James, M.J.) (quoting *Ministry of Def.* & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Defense Sys., Inc., 665 F.3d 1091, 1094 n.1 (9th Cir. 2011)). Because the exceptions to confirmation are so limited, "review of the award itself is 'both limited and highly deferential' and an arbitration award may be vacated only if it is 'completely irrational' or 'constitutes manifest disregard of the law.'" PowerAgent Inc. v. Electronic Data Sys. Corp., 358 F.3d 1187, 1193 (9th Cir. 2004) (quoting Coutee, 336 F.3d at 1132-33; see also Hall Street, 552 U.S. at 588 ("Instead of fighting the text, it makes more sense to see the three provisions, §§ 9-11, as substantiating a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway"); K&M Installation, 2016 WL 1559712 at *2-3. Under that standard, "confirmation is required even in the face of erroneous findings of fact or misinterpretations of law." Kyocera Corp. v. Prudential-Bache Trade Servs., Inc., 341 F.3d 987, 997 (9th Cir. 2003) (quoting French v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 784 F.2d 902, 906 (9th Cir. 1986) (internal quotations omitted). A showing of error—"or even a serious error"—is insufficient to set aside an arbitration award. Stolt-Nielsen, 559 U.S.at 671.

